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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,334	01/09/2002	Onno Dirk Oenema	98-IKU-837	3239
7590		01/22/2009		
Eaton Corporation			EXAMINER	
Eaton Centre			CONSYLvio, MARK J	
1111 Superior Avenue			ART UNIT	PAPER NUMBER
Cleveland, OH 44114-2584			2872	
			MAIL DATE	DELIVERY MODE
			01/22/2009	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ONNO DIRK OENEMA, PAUL WESSEL POST, and
MARCO RAYMOND MARIA NIJMEIJER

Appeal 2009-0617
Application 09/831,334
Technology Center 2800

Decided: January 22, 2009

Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and
MAHSHID D. SAADAT, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 27-31. Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

A. INVENTION

The invention at issue on appeal relates to:

an electrically controlled mirror for a motor vehicle, provided with a support to be mounted on a vehicle for a mirror housing having a mirror plate movable in said mirror housing and electromechanical means for adjusting the mirror housing relative to the support and the mirror plate relative to the mirror housing, and with any means for accommodating one or more other functions, such as mirror heating, electrochrome dimming of light falling on the mirror plate, various lighting functions, remote control means, etc. in the mirror housing.

(Spec. 1).

The reinforcement element is preferably made of metal and is in particular insert-molded in the plastic build-up element in wholly or partially folded condition. This further contributes to the strength of the build-up element. Although the reinforcement element may also be formed from other materials, for instance a glass fiber-reinforced plastic, the use of metal offers the great advantage that the reinforcement element can be designed as a multi-core electric conductor for the functions to be realized in the mirror housing by means of the above-mentioned means. In other words, the electric cable work for the various components can also be integrated into the build-up element, so that in the mirror housing no separate cables need to be passed to the various components.

(Spec. 2-3).

B. ILLUSTRATIVE CLAIM

Claim 27, which further illustrates the invention, follows.

27. An electrically controlled mirror assembly for a motor vehicle comprising:

(a) a support adapted for mounting on a vehicle;

- (b) a mirror housing moveably associated with said support comprising a single build-up element formed of non-conductive material with a reinforcing element insert molded therein for increasing the rigidity and strength of the build-up element, said build-up element defining a hollow;
- (c) a mirror plate moveably associated with the housing;
- (d) electromechanical means operable upon energization for adjusting said housing relative to said support and for adjusting said mirror plate relative to said housing;
- (e) means operable upon electrical energization for performing an ancillary function; and,
- (f) an electronics unit received in said hollow for controlling said energization for said adjusting.

C. REFERENCES

The Examiner relies on the following references as evidence:

Huizenga	US 5,900,999	May 4, 1999
Fuerst	US 6,247,823 B1	Jun. 19, 2001
Wessels, Jr.	US 2005/0281517 A1	Dec. 22, 2005
Farzin-Nia	US 2007/0122763 A1	May 31, 2007

Admitted prior art set forth in Appellants' Specification, p. 6-7.

D. REJECTIONS

The Examiner makes the following rejections.

Claims 27-31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Huizenga in view of Fuerst.

II. ISSUE

Have Appellants shown error in the Examiner's initial showing of obviousness under 35 U.S.C. § 103?

III. PRINCIPLES OF LAW

I. Scope of Claim

The claim construction analysis begins with the words of the claim. See *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). The presumption will be overcome where the patentee, acting as his own lexicographer, has set forth a definition for the term different from its ordinary and customary meaning or where the patentee has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope. *Id.* at 1299. Our reviewing court has established that the words in claims should be defined as they are disclosed in the specification before resorting to their dictionary definitions. *Phillips v. AWH Industries*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc).

2. Obviousness

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See *In re Kahn*, 441 F.3d 977, 987-988 (Fed. Cir. 2006); *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not

only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. *In re Preda*, 401 F.2d 825, 826 (CCPA 1968).

In identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art teachings, the Examiner must show some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007).

IV. ANALYSIS

Appellants' main argument is based on the Examiner's statement in the rejection that Huizenga will inherently provide a degree of reinforcement to the build-up element and, thus satisfying the claimed limitation. (App. Br. 3). Both Appellants and the Examiner provide extrinsic evidence to address the language "inherently" used by the Examiner in the statement of the rejection. Here, we find the rejection is based upon obviousness, and we need not dwell on the exact terminology used by the Examiner in the statement of the rejection. From our review of the teachings of Huizenga and Fuerst, we agree with the Examiner that the teachings of Huizenga would have fairly suggested to one of ordinary skill in the art that the encapsulation of metallic conductors in the plastic housing would functionally provide the claimed "reinforcing element insert molded therein for increasing the rigidity and strength" of the plastic housing.

While we can speculate that there may be some conductive material which may lessen the rigidity and strength of the plastic housing, we find that most, if not all, of the exemplary materials disclosed by Huizenga in

column 9 would increase the rigidity and strength of the plastic housing. We find that the level of increase in rigidity and strength may vary from material to material and from the actual placement of the conductors, but that there would be some increase of strength and rigidity.

Appellants contend that the Examiner has not provided any reasoning or evidence showing the electrical leads formed in the housing member 19 in Huizenga "necessarily" increase the strength and rigidity of the housing element 19. (App. Br. 3). Appellants further contend that wires are often flexible and not rigid. (*Id.*). We do not find Appellants' argument persuasive of error in the Examiner's *prima facie* case of obviousness since the express claim language merely recites an increase in the rigidity and strength. Therefore, the initial strength and rigidity of the conductor is immaterial as long as there is a net increase in the rigidity and strength of the build up element/plastic housing. Appellants additionally contend that at best the housing 19 of Huizenga acts as a stiffening support for the leads and not the other way around. (*Id.*). We disagree with Appellants' unsupported contention. Here, it would have been readily apparent to those skilled in the art that a combination of two materials intermingled would generally have increased the rigidity and strength of the combined material or composition of matter. Well-known examples are reinforced concrete, safety glass with metal mesh, and windshield glass with plastic.

In the present prosecution, Appellants seem to latch on to the Examiner's use of the word "inherently" and attempt to show error in this statement rather than focusing on what one of ordinary skill in the art would have appreciated in light of the teachings of Huizenga and Fuerst. Here, we find that virtually all metal conductors would have increased the rigidity and

strength of a plastic somewhat. Therefore, we find Appellants' argument unpersuasive of error in the Examiner's initial showing of obviousness light of the teachings of Huizenga and Fuerst.

Additionally, we find that the teachings of Huizenga and Fuerst teach and suggest the same claimed structure as recited in the independent claim 27 and therefore would have had the same functional benefits of increasing the strength and rigidity of the plastic alone. While Appellants opine that it necessarily would not happen, Appellants have not identified any specific instance that the same structure, as broadly recited in independent claim 27, would not provide the same functional benefit.

At page 5 of Appellants' Brief, Appellants state "[a]t best, the rigidity and strength of the housing 19 is dictated by the housing material, with the leads having virtually no effect on the rigidity of the housing. Thus, the metal leads in Huizenga do not teach or suggest the claimed reinforcing element."

Here, Appellants' statement reinforces our above conclusions and findings since "virtually no effect" is not the same as no effect or a negative effect. Hence, "virtually no effect" is equal to an increase in the strength and rigidity. Therefore, we find Appellants' argument unpersuasive to show error in the Examiner's initial showing of obviousness of independent claim 27. Therefore we will sustain the rejection of independent claim 27 and dependent claims 28-30.

With respect to independent claim 31, Appellants rely upon similar arguments as advanced with respect to independent claim 27. Therefore, we will group independent claim 31 with independent claim 27, and sustain the rejection thereof.

V. CONCLUSION

For the aforementioned reasons, Appellants have not shown that the Examiner erred in the initial showing of obviousness.

VI. ORDER

We affirm the obviousness rejections of claims 27-31.

AFFIRMED

msc

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